

MAR 6 1975

IN THE

MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

October Term, 1974

Nos. 74-157 and 74-847

UNITED HOUSING FOUNDATION, INC., et al.,

Petitioners,

v.

MILTON FORMAN, et al.,

Respondents,

and

THE STATE OF NEW YORK and THE NEW YORK
STATE HOUSING FINANCE AGENCY,*Petitioners,*

v.

MILTON FORMAN, et al.,

*Respondents.*On Writs of Certiorari to the United States
Court of Appeals for the Second Circuit

Petition for Certiorari in No. 74-157 Filed August 22, 1974

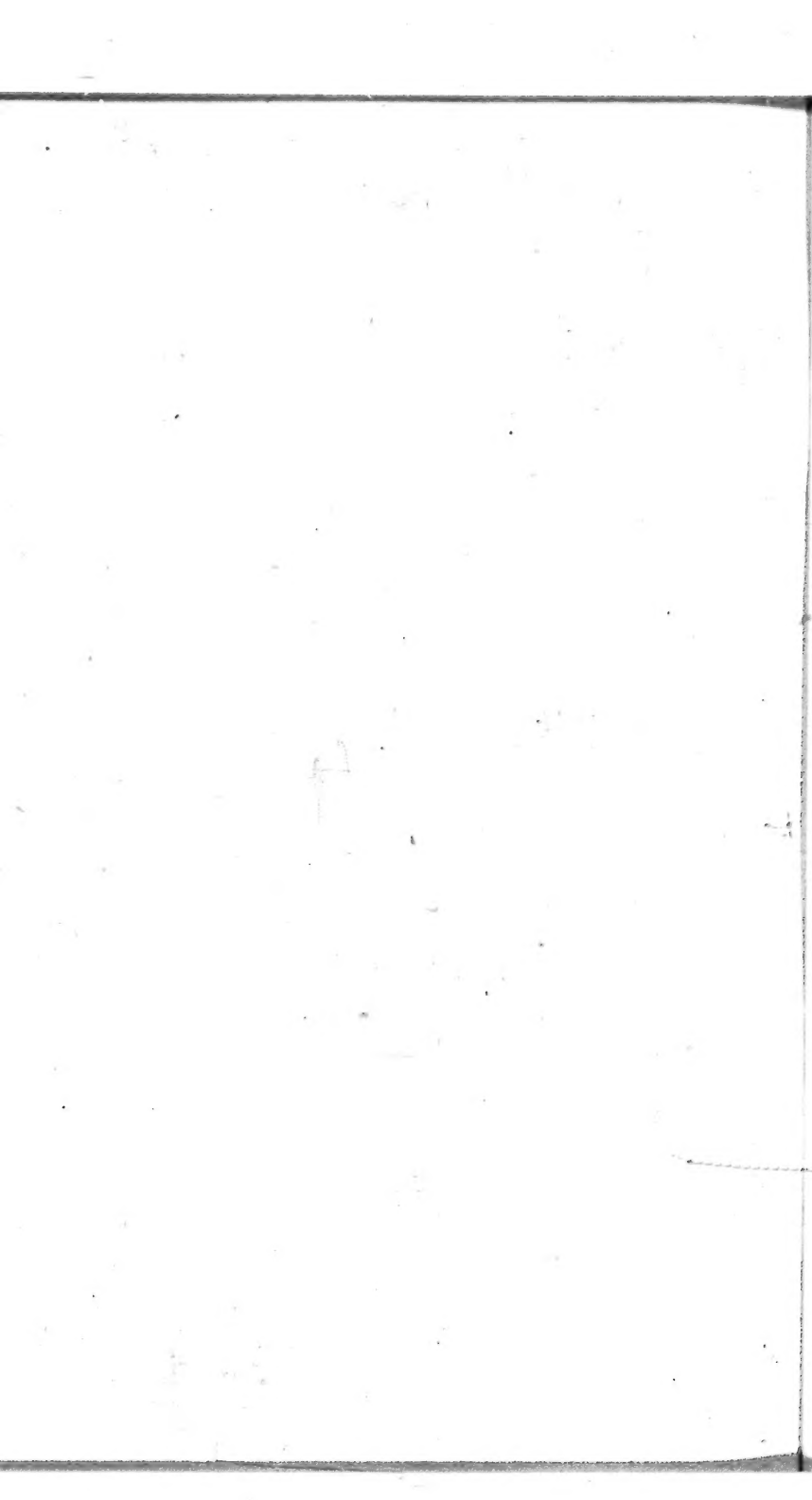
Petition for Certiorari in No. 74-847

Filed November 22, 1974

Certiorari Granted January 20, 1975

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**Docket Entries in United States District Court
for the Southern District of New York**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[72 Civ. 3980]

MILTON and ELLEN FORMAN, EARLE and PATRICIA McFIELD,
MICHAEL and PHYLLIS SICILIAN, JACK and DIANE R. BLACKIN,
CARL and ALMA TROST, ROBERT and PAULINE CARRINGTON,
GILBERT and GLORIA NARINS, MURRAY and HELENE VICTOR,
JEROME and LEONORE BAER, HAROLD ASNIN, JOSEPH S. and
WANDA D. O'CONNOR, ABRAHAM and IRENE KOPOLSKY, RICH-
ARD FERGUSON, HYMAN and BEATRICE FERTEL, HERMAN and
MYRA ACKERMAN, BERNARD and VICTORIA SEINFELD, FRANK
and HILDA GLASSMAN, WALTER SIMON, THOMAS D. and ELSA
A. MACLEAN, MELVYN and GLORIA PLOTZKER, GARY and
CHARLOTTE STERN, MAX and BETTINA SCHWARTZHAUPT, HER-
MAN B. and ROSE GOLDBERG, STEPHEN and JUANITA REY-
NOLDS, ARTHUR and GERTRUDE LUCKER, ABRAHAM and HEN-
RIETTE SCHENCK, REGINALD and ZENOBIA THOMAS, JOHN, JR.
and ELISSA PYATT, ALBERT L. and RHODA ABRAMS, and JACK
and PEARL HANDSCHUH, individually and on behalf of them-
selves and all others similarly situated, and in the right of
RIVERBAY CORPORATION,

Plaintiffs,

against

COMMUNITY SERVICES, INC., UNITED HOUSING FOUNDATION,
THE STATE OF NEW YORK, THE NEW YORK STATE HOUSING
FINANCE AGENCY, HAROLD OSTROFF, ROBERT SZOLD, MILTON
ALTMAN, GEORGE SCHECTER, ANTHONY MARINO, PAUL
KRAMER, IRVING ALTER, JULIUS GOLDBERG and RIVERBAY
CORPORATION,

Defendants.

Docket Entries

DATE	PROCEEDINGS
Sep. 19-72	Filed complaint and issued summons • • •
Oct. 25-72	Filed Amended Complaint
Nov. 20-72	Filed Answer of New York State Finance Agency and State of New York LJJ • • •
Dec. 14-72	Filed Answer of Riverbay Corp. to complaint.
Dec. 19-72	Filed Notice of Motion Ret. 1/2/73 at 10AM in Room 2601 re: dismiss amended complaint. • • •
Dec. 21-72	Filed Defts. State of NY & NYS Housing Finance Agency. Re: Dismiss Amended Com- plaint. Ret. 1/9/73. • • •
Apr. 1-73	Filed Supplemental Affidavit of George Berger to bring to the Court attention fact not aware. (for plttfs.) • • •
Apr. 6-73	Filed Notice of Cross Motion. Re: Summary Judgment, Amended Complaint, etc. ret. 2/ 6/73. • • •
Sep. 4-73	Filed Second Supplemental Affidavit by George Berger.
Sep. 6-73	Filed Opinion #39808 — The Complaint is therefore dismissed in its entirety for lack of subject matter jurisdiction. Pierce, J. (mailed notice)

Docket Entries

DATE

PROCEEDINGS

- Sep. 13-73 Filed Judgment. Ordered that defts. Community Services, Inc. et al. have judgment against the pltffs. Milton & Ellen Forman, et al., dismissing complaint in its entirety. Clerk. (mailed notice)
- Oct. 3-73 Filed pltffs notice of appeal from order of dismissal dated 9-6-73—Mailed copies.
- Oct. 3-73 Appeal Bond filed.
- Oct. 17-73 Correcting Order filed by Judge Pierce.

• • •

**Docket Entries in the United States Court of Appeals
for the Second Circuit**

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

APPEAL FROM SOUTHERN DISTRICT

CASE No. 73-2613

[TITLE OMITTED IN PRINTING]

DATE	FILINGS—PROCEEDINGS
10-9-73	Filed copies of notice of appeal and docket entries • • •
12-28-73	Filed appendix, p/s • • •
4-4-74	Argument heard (By: Hays, Oakes, Christian- sen)
6-12-74	Judgment reversed and remanded, Oakes, CJ
6-12-74	Filed judgment • • •
6-25-74	Filed petition for rehearing and rehearing en banc
6-28-74	Filed motion for a stay of the mandate pending application for a writ of certiorari, appellees, p/s
7-1-74	Filed affidavit in opposition to motion for a stay of the mandate, appellants, p/s

Docket Entries

DATE	FILINGS—PROCEEDINGS
7-2-74	Filed affidavit in reply to appellants affidavit in opposition to motion to stay the mandate, appellee, p/s
7-24-74	Filed order granting stay of mandate pending application for writ of certiorari (appellee)
8-22-74	Filed notice of filing of petition for writ of certiorari in Supreme Court (SC# 74-157)
9-9-74	Filed order denying petition for rehearing
9-9-74	Filed order denying petition for rehearing en banc
11-29-74	Filed notice of filing a petition for writ of certiorari (SC# 74-647)

Amended Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[TITLE OMITTED IN PRINTING]

Plaintiffs, by their attorneys, Phillips, Nizer, Benjamin, Krim & Ballon, complaining of defendants, allege:

JURISDICTION

1. Jurisdiction of this Court is based upon the Securities Laws of the United States, including, without limitation, sections 10, 20 and 27 of the Securities Exchange Act of 1934, 15 U.S.C. §§78j(b), 78t and 78aa, rule 10b-5 of the General Rules and Regulations under the Securities Exchange Act of 1934, 17 C.F.R. 240.10b-5, and sections 17(a) and 22(a) of the Securities Act of 1933, as amended, 15 U.S.C. §§77q(a) and 77v(a); The Civil Rights Act, 42 U.S.C. §§1983 and 1988, 28 U.S.C. §1343; 28 U.S.C. §1331; and jurisdiction pendent thereto. The amount in controversy exceeds \$10,000 exclusive of interest and costs.

CLASS AND DERIVATIVE ACTION ALLEGATIONS

2. (a) Plaintiffs, all residents of the County of Bronx, State of New York, bring this action on their own behalf, as a class action on behalf of all other persons similarly situated, pursuant to Rule 23(b)(1)(B), (2) and (3) of the Federal Rules of Civil Procedure, and as a derivative action, pursuant to Rule 23.1 of the Federal Rules of Civil Procedure, in the right and for the benefit of Riverbay Corporation ("Riverbay"). As alleged in paragraph 5, *infra*, Riverbay is the corporate owner of Co-op City, a coopera-

Amended Complaint

tive housing development. There are approximately 15,372 subscribers to and beneficial owners of the common stock of Riverbay who constitute the members of the class herein. In some instances, title may be joint in the names of a husband and wife, but for purposes of this complaint, the ownership of each apartment unit is treated as a single member of the class.

(b) Plaintiffs, who are, and at the time of the transactions herein complained of were, subscribers to and the beneficial owners of said common stock (a security within the meaning of the Securities Laws of the United States) of an aggregate value in excess of \$50,000, will fairly and adequately protect the interests of said class. The instant action was authorized by the Advisory Council of Co-op City, without dissent. Said Advisory Council is a 133-member body elected by all of the residents of Co-op City. The funds necessary to finance this action were obtained by small contributions from more than 12,000 members of the class. The plaintiffs named herein have been selected to present a representative cross-section of the entire community. All members of the class purchased their stock in reliance upon the representations referred to herein.

(c) The questions of law and fact under the class action counts common to the entire class are:

(1) Whether the Information Bulletin and revised Information Bulletin made misstatements of material facts and failed to state material facts which were necessary to make the representations contained within said bulletins not misleading.

(2) What defendants actually knew or should have known concerning said material facts at the time of the publication and circulation of said bulletins.

Amended Complaint

(3) Whether defendants became fiduciaries to plaintiffs and, if so, when did the fiduciary relationship arise.

(4) Whether the wrongs alleged in the First through Ninth Counts are actionable under the statutes cited or at common law.

(d) Conducting this litigation as a class action is superior to all other available methods of fair and efficient adjudication of this controversy, since:

(1) The members of the class are too numerous to permit the institution and prosecution of separate actions; the cost and expense of such individual actions by individual purchasers alone when weighed against the recovery obtainable, would be prohibitive to the point of constituting an actual bar to the bringing of such actions;

(2) To the best of plaintiffs' knowledge, this action is the only action against defendants for the wrongs herein complained of;

(3) All of the members of the class reside in the Southern District of New York and therefore it is desirable to have the litigation of the claims of the class determined in this forum;

(4) Having this litigation proceed as a class action will result in substantial convenience to defendants by avoiding a multiplicity of actions and thereby will also be in the best interests of efficient judicial administration;

(5) Adjudication with respect to individual members of the class would as a practical matter dispose of the interests of the other members of the class not parties to such adjudication or substantially impair or impede their ability to protect their interests;

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(6) Defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole; and

(7) The difficulties likely to be encountered in the management of this action as a class action are certainly no greater than other cases of this nature which have heretofore been declared by this Court to be maintainable as class actions.

(e) This action is not a collusive one to confer jurisdiction on a court of the United States which it would not otherwise have.

THE PARTIES

3. Upon information and belief, defendant United Housing Foundation ("United") is a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York, which at all times mentioned herein was engaged, *inter alia*, in the sponsorship of middle-income cooperative housing.

4. Upon information and belief, defendant Community Services, Inc. ("Community") is a corporation organized and existing under the Business Corporation Law of the State of New York, which was used by United to build and sell middle-income cooperative housing sponsored by United.

5. Riverbay is a mutual company organized and existing under the Private Housing Finance Law of the State of New York (popularly called the Mitchell-Lama Act) for the purpose of owning and operating a middle-income cooperative housing development known as "Co-op City", comprising approximately 15,372 apartment units located in the County of Bronx, State of New York.

Amended Complaint

6. Defendant the State of New York ("State"), acting by and through the Commissioner of Housing and Community Renewal ("Commissioner") is required by the Mitchell-Lama Act to supervise the construction, sales and management of housing built pursuant thereto and is charged by said statute with the specific duty of preventing anything from being done which is improvident or prejudicial to the interest of the stockholders or the tenants of such housing.

7. Defendant the New York State Housing Finance Agency ("Agency") is a corporate agency of the State, created by the Mitchell-Lama Act, to help finance middle-income housing built pursuant to said Act by means of the sale of bonds and the making of mortgage loans.

8. Upon information and belief, defendants Harold Ostroff ("Ostroff"), Robert Szold ("Szold"), George Schechter ("Schechter") and Anthony Marino ("Marino") at all times mentioned herein were directors or officers, or both, of United.

9. Upon information and belief, defendants Ostroff, Szold, Milton Altman ("Altman"), Schechter, Marino, Paul Kramer ("Kramer"), Irving Alter ("Alter") and Julius Goldberg ("Goldberg") at all times mentioned herein were directors or officers, or both, of Community.

10. Upon information and belief, defendants Ostroff, Szold, Schechter, Kramer and Alter at all times mentioned herein were directors or officers, or both, of Riverbay.

11. Each of the individual defendants named in paragraphs 8 through 10, inclusive, is a "controlling person" within the meaning of the Securities Laws of the United States.

*Amended Complaint***FIRST COUNT AGAINST ALL DEFENDANTS EXCEPT RIVERBAY**

12. Prior to May, 1965, the defendants other than the State, the Agency and Riverbay, undertook to construct a cooperative housing development in Bronx County, New York, pursuant to the Mitchell-Lama Act. Pursuant to said undertaking, United caused Riverbay to be organized and applied to the State, acting by and through the Commissioner, for approval of a proposed development to be known as Co-op City, to be sponsored by United, owned by Riverbay, and constructed by Community to provide moderate-priced cooperative housing for people of limited means. Community was also to act as sales agent, soliciting and accepting subscriptions for the common stock of Riverbay, and to perform administrative services for Co-op City during construction and early occupancy. Thereafter, the State approved said application and defendants caused Riverbay to enter into a construction contract, a sales agency agreement and an administrative service agreement, all with Community and all dated June 18, 1965, which contract and agreements were approved by the State. In granting such approval, the State, acting by and through the Commissioner, expressly waived for Community the financial-responsibility pre-qualification theretofore promulgated by the Commissioner as a condition for approval of general contractors engaged by owners for construction of such housing projects.

13. Pursuant to the undertaking referred to in paragraph 12, defendants also caused Riverbay to enter into a building loan agreement with the Agency, dated July 15, 1965.

14. In accordance with the provisions of the Mitchell-Lama Act and in order to effectuate its purpose of providing moderate-priced housing for people of limited means,

Amended Complaint

the right to buy stock, and thus the opportunity of applying for said stock, was restricted to persons whose annual income did not exceed six times the estimated annual carrying charges (seven times in the case of families with three or more dependents) [Private Housing Finance Law §31].

15. Upon information and belief, commencing on or about May 12, 1965, United and Community and the individual defendants, with the approval and consent of the State, acting by and through the Commissioner, published and circulated and caused Riverbay to publish and circulate until on or about May 15, 1967, an "Information Bulletin" which was designed to interest the public in subscribing to and purchasing the common stock of Riverbay and which offered to sell said stock and expressly invited offers for such subscription and purchase.

16. The Information Bulletin purported to make true statements of certain material facts concerning Co-op City upon which defendants intended prospective purchasers to rely in deciding whether or not to invest all or a substantial part of their life savings in the purchase of Riverbay stock.

17. The Information Bulletin stated that the total estimated project cost of the Co-op City project was \$283,695,550; that \$32,795,550 of this amount was to be provided by stockholder-subscribers through the purchase of stock and/or other equity obligations; and that the balance was to be obtained by means of a \$250,900,000 40-year, self-liquidating permanent loan to Riverbay from the Agency, secured by a first mortgage upon the land and buildings in Co-op City.

18. The Information Bulletin stated further that:

"It is anticipated that the General Contractor for the construction of the project will be Community

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Services, Inc. of 465 Grand Street, New York 2, New York. The performance of certain sub-contracts to be made with the General Contractor will be insured by a surety company or companies in amounts to be approved by the Commissioner, in favor of the Housing Company [Riverbay], the General Contractor and the New York State Housing Finance Agency.

* * *

"The construction contract will be executed prior to the mortgage loan closing. The contract will provide for the payment of a lump sum price to the Contractor for the construction of the project, in the amount of \$258,678,000, subject to addition or deduction for change orders during the progress of construction as approved by the Commissioner.

"The contract price will include the sum of \$2,000,000 for builder's home office overhead, but there will be no builder's fee. The risk of completing the construction within the lump sum price is upon the Contractor."

The Information Bulletin stated further that a copy of the construction contract was or would be made available for inspection by prospective purchasers and that they "should familiarize" themselves with it.

19. The construction contract between Community and Riverbay, dated June 18, 1965, provided for payment of a lump sum price of \$258,507,750 for the construction of the project, including a flat fee of \$2,000,000 for Community's "Home Office Overhead"; and, as to all items of construction cost other than said item of "Home Office Overhead", which items were specified in a schedule attached to the contract, the contract provided:

"The Contractor [Community] guarantees payment for said items notwithstanding that the actual

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cost for said items may exceed the amounts therein set forth."

20. The Information Bulletin stated further:

"Subject to the approval of the Commissioner, Community Services, Inc., of 465 Grand Street, New York, New York, has been retained by the Housing Company as sole agent for the sale of stock and/or other equity obligations and apartments in the project, at such fee as the Commissioner shall approve, not to exceed the amount shown in the schedule of the estimated project cost."

\$450,000 was the amount shown in said schedule annexed to and made part of the construction contract.

21. The sales agency agreement between Community and Riverbay, dated June 18, 1965, provided that the total amount to be paid to Community would in no event exceed the sum of \$450,000.

22. The Information Bulletin stated further that the average monthly carrying charge, required for the operation and maintenance of the project and the reduction of the mortgage loan, would be approximately \$23.02 per room.

23. Upon information and belief, commencing on or about May 15, 1967, United and Community, with the approval and consent of the State, acting by and through the Commissioner, published and circulated and caused Riverbay to publish and circulate a revised "Information Bulletin" which, like the original Information Bulletin, was designed to interest the public in subscribing to and purchasing the common stock of Riverbay and, in fact, offered to sell such stock and included subscription agreement forms to be used by prospective purchasers thereof.

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24. The revised Information Bulletin, like the original Information Bulletin, purported to make true statements of certain material facts concerning Co-op City, upon which defendants intended prospective purchasers to rely in deciding whether or not to invest all of a substantial part of their life savings in the purchase of Riverbay stock.

25. The revised Information Bulletin substantially reiterated the statements with respect to financing, construction and sales made in the original Information Bulletin and set forth in paragraphs 17, 18, 20 and 22 above, except that it stated:

(a) The total estimated development cost of the Co-op City project was \$293,803,200, instead of \$283,695,550;

(b) The amount of said development cost of the Co-op City project to be provided by stockholder-subscribers would be \$32,803,200 instead of \$32,795,550;

(c) The amount of the mortgage loan would be \$261,000,000, instead of \$250,900,000;

(d) The average monthly carrying charge would be approximately \$25.00 per room, instead of \$23.02;

(e) The lump-sum construction contract price was \$267,830,750, instead of \$258,507,750; and

(f) The fee to be paid to Community as sales agent would be \$500,000, instead of \$450,000.

26. On April 14, 1967, the construction contract between Community and Riverbay was modified, among other things, to increase the contract price from \$258,507,750 to \$267,830,750, and the sales agency agreement was modified

Amended Complaint

to increase the fee to be paid to Community from \$450,000 to \$500,000. The provisions of the contract and of the agreement in all other material respects were unchanged.

27. Plaintiffs received the Information Bulletin or the revised Information Bulletin, or both, and in reliance thereon subscribed to and paid for shares of common stock in Riverbay and thereafter entered into occupancy of apartments in Co-op City.

28. Upon information and belief, thousands of persons of limited means similarly received said Information Bulletins and in reliance thereon subscribed to and paid for shares of common stock in Riverbay and thereafter entered into occupancy of apartments in Co-op City.

29. Defendants engaged in acts, practices and a course of business which operated as a fraud and deceit upon the public in that they published and circulated, and caused to be published and circulated, as aforesaid, the Information Bulletin and the revised Information Bulletin, which omitted to state the material facts that the construction contract and the sales agency agreement would be modified from time to time so as to provide for payment to Community of increased compensation, and that a third agreement—the administrative service agreement between Community and Riverbay, dated June 18, 1965, providing for payment to Community of \$200,000—was in existence and that such agreement would be modified from time to time so as to provide for payment to Community of increased compensation, which facts were necessary to make the representations set forth and referred in paragraphs 17, 18, 20, 22 and 25, above, not misleading, and which Information Bulletin and revised Information Bulletin contained representations which constituted untrue and deceptive statements of material facts, as hereinbelow alleged.

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30. Upon information and belief, defendants never intended that Community would be required to adhere to the lump-sum contract price or that the risk of completing construction of Co-op City within the lump-sum price stated in the Information Bulletin and the revised Information Bulletin would be upon Community.

31. While the Information Bulletin and the revised Information Bulletin, as the case may be, were being published and circulated, the said representations made therein were false in that, with regard to those stockholder-subscribers who subscribed for their stock in sole reliance on the Information Bulletin: on April 14, 1967, by agreement between Community and Riverbay, with the consent and approval of the State, acting by and through the Commissioner, but without notice to the then-existing and prospective stockholder-subscribers of Riverbay, and without changing the Information Bulletin, the lump-sum construction contract price was increased from \$258,507,750 to \$267,830,750, an increase of \$9,323,000; and in that, with regard to all stockholder-subscribers, including those who subscribed for their stock on sole reliance on the Information Bulletin:

(a) On January 22, 1968, by agreement between Community and Riverbay, with the consent and approval of the State, acting by and through the Commissioner, but without notice to the existing and prospective stockholder-subscribers of Riverbay, and without changing the revised Information Bulletin, the lump-sum construction contract price was increased again, from \$267,830,750 to \$268,080,750, an increase of \$250,000 and an aggregate increase of \$9,578,000 from the original contract price;

(b) On March 29, 1968, by agreement between Community and Riverbay, with the consent and ap-

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proval of the State, acting by and through the Commissioner, but without notice to the then-existing and prospective stockholder-subscribers of Riverbay, and without changing the revised Information Bulletin, the lump-sum construction contract price was increased the third time, from \$268,080,750, to \$269,980,750, an increase of \$1,900,000 and an aggregate increase of \$11,478,000 from the original contract price.

(c) On October 9, 1969, by agreement between Community and Riverbay, with the consent and approval of the State, acting by and through the Commissioner, but without notice to the then-existing and prospective stockholder-subscribers of Riverbay, and without changing the revised Information Bulletin, the lump-sum construction contract price was increased the fourth time, from \$269,980,750 to \$310,500,000, an increase of \$40,519,250 and an aggregate increase of \$51,997,250 from the original contract price.

(d) On July 7, 1971, by agreement between Community and Riverbay, with the consent and approval of the State, acting by and through the Commissioner, but without notice to the then-existing and prospective stockholder-subscribers of Riverbay, and without changing the revised Information Bulletin, the lump-sum construction contract price was increased the fifth time, from \$310,500,000 to \$340,500,000, an increase of \$30,000,000 and an aggregate increase of \$81,997,250 from the original contract price of \$258,507,750.

(e) Upon information and belief, Community, with the consent and approval of the State, acting by and through the Commissioner, but without notice to

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the then-existing and prospective stockholder-subscribers of Riverbay, and without changing the Information Bulletin and revised Information Bulletin, waived sub-contractor's performance bonds.

(f) Upon information and belief, Community and Riverbay, with the consent and approval of the State, acting by and through the Commissioner, but without notice to the then-existing and prospective stockholder-subscribers of Riverbay, and without changing said Information Bulletin and said revised Information Bulletin, increased the fee to Community for "Builder's Home Office Overhead" to \$3,050,000 from the specified sum of \$2,000,000, and said increased fee was included as an item of the increased construction contract price.

(g) The facts set forth in paragraphs 32, 33 and 34 had also occurred.

32. Because of and in addition to the increase in the price of the construction contract, the costs of related service fees were likewise increased by \$2,510,000, without the knowledge or consent of plaintiffs, as follows:

(a) Architect's fees increased from \$2,350,000 to \$2,975,000;

(b) Engineer's and laboratory fees increased from \$750,000 to \$1,275,000;

(c) Surveyor's fees increased from \$400,000 to \$1,450,000;

(d) Legal fees increased from \$150,000 to \$210,000;

(e) Selling expenses (payable to Community) increased from \$450,000 to \$600,000;

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(f) Administrative expenses (payable to Community) increased from \$200,000 to \$300,000.

33. By reason of the foregoing, the construction cost was increased \$81,997,250 and related service fees were increased \$2,510,000, for a total increase of \$84,507,250. In order to provide funds to pay for said increases, defendants caused Riverbay to enter into several agreements with the Agency, without the knowledge or consent of plaintiffs, whereby the original mortgage loan to Riverbay was increased by an amount sufficient to cover the increases in construction cost and related services, as well as still further increases in financing costs incurred as a result of the increase in the amount of the mortgage loan itself. In requesting and approving and in granting said increases in the mortgage loan, the Commissioner and the Agency acted with full knowledge that said increases were contrary to and in violation of the representations contained in the Information Bulletin and the revised Information Bulletin and exceeded the authority of Riverbay.

34. The mortgage loan was increased from \$236,655,710 to \$375,755,710, and corresponding financing costs were increased by \$66,624,000, as follows:

(a) Supervising governmental agency fees (New York State Department of Housing and Community Renewal) increased from \$2,509,000 to \$3,510,000;

(b) New York State Housing Finance Agency fees increased from \$501,800 to \$1,170,000;

(c) Title and recording expenses increased from \$340,000 to \$545,000;

(d) Interest, capitalized for the construction period, increased from \$6,250,000 to \$71,000,000.

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35. In order to obtain the necessary monies to repay said increased mortgage loan, defendants, with the consent and approval of the State, acting by and through the Commissioner, caused Riverbay to increase the average monthly carrying charge levied on plaintiffs from an estimated \$23.02 per room in 1965, to \$25.00 in 1967, to \$31.46 from July 1, 1970 through December 31, 1972, to \$37.75 from January 1, 1973 through June 30, 1974, to \$42.47 commencing July 1, 1974, all without the consent of the plaintiffs.

36. The eligibility limitations on purchasing stock in Riverbay set forth in paragraph 14 above, which made it impossible for those persons to become stockholder-subscribers of Riverbay who might otherwise have been able to afford to pay said increased carrying charges, compounded the economic hardship suffered by plaintiffs by reason of the said increases.

37. Upon information and belief, in or about October, 1968, with knowledge that the Information Bulletin and the revised Information Bulletin omitted to state material facts and that said Bulletin and revised Bulletin contained representations which were false and misleading, defendants attempted to obtain from the stockholder-subscribers of Riverbay a waiver of defendants' obligation to comply with the provisions of the Securities Laws of the United States, by creating and submitting to Riverbay's stockholder-subscribers a letter which purported to alert them to an unspecified increase in carrying charges in 1970-71 (but which did not refer to later and larger increases). Said letter falsely and misleadingly represented that such increase was "inevitable" by reason of, among other things, "construction cost increases", and deliberately omitted to state the fact that Community was obligated by its contract with Riverbay to pay such construction cost increases and that Riverbay was not so obligated.

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38. Plaintiffs, and all persons similarly situated, have been damaged in that they paid approximately \$32,000,000 for their shares of Riverbay common stock, and paid and will be obliged to pay carrying charges greatly in excess of the sums which it was represented in the Information Bulletin and the revised Information Bulletin that they would be required to pay.

39. Upon information and belief, the acts and transactions hereinabove alleged, which were not known or discovered by plaintiffs until 1972, directly and indirectly involved the use of a means or instrumentality of interstate commerce and of the mails in that copies of the Information Bulletin and of the revised Information Bulletin and the subscription agreements (referred to and contained therein) were distributed through the mails, and requests for said Bulletins and for subscription agreements were received and accepted by defendants over the telephone and through the mails.

SECOND COUNT AGAINST ALL DEFENDANTS EXCEPT RIVERBAY

40. Repeat and reallege each and every allegation contained in paragraphs 12 through 39 hereof with the same force and effect as if fully set forth herein.

41. Upon information and belief, the statements and representations set forth and referred to in paragraphs 17, 18, 20, 22 and 25 above were false and were known to defendants to be false when made, or were made recklessly, without knowledge of their truth or falsity, and were made with the knowledge that whoever might read or learn of said statements and representations, including plaintiffs, would rely thereon.

Amended Complaint

42. In reliance upon said statements and representations and believing the same to be true, plaintiffs subscribed to and paid for shares of said stock, sold or surrendered their prior homes or apartments, and entered into occupancy of apartments in Co-op City.

43. Upon information and belief, thousands of other stockholder-subscribers were similarly deceived and defrauded and, as a result of their belief in and reliance upon said false statements and representations, purchased shares of Riverbay common stock, sold or surrendered their prior homes or apartments, and entered into occupancy of apartments in Co-op City.

44. Plaintiffs, and all persons similarly situated, have been damaged in that they have paid approximately \$32,000,000 for their shares of Riverbay common stock, and paid and will be obliged to pay carrying charges greatly in excess of the sums which it was represented that they would be required to pay and which they actually were obligated to pay under the original agreements.

THIRD COUNT AGAINST ALL DEFENDANTS EXCEPT RIVERBAY

45. Repeat and reallege each and every allegation contained in paragraphs 12 through 38 and paragraphs 41 through 44 hereof with the same force and effect as if fully set forth herein.

46. Upon information and belief, the acts and transactions hereinabove alleged were not known or discovered by plaintiffs until 1972.

47. Upon information and belief, in the light of all the circumstances, and the purpose of the Mitchell-Lama Act, said false statements and representations and the acts,

Amended Complaint

practices and course of business engaged in by defendants, hereinabove alleged, constituted a gross fraud aimed at the public, committed with wanton indifference to legal obligations and a reckless disregard for consequences, and involving a high degree of moral culpability.

FOURTH COUNT AGAINST ALL DEFENDANTS EXCEPT RIVERBAY

48. Repeat and reallege each and every allegation contained in paragraphs 12 through 38 and 46 hereof with the same force and effect as if fully set forth herein.

49. Upon information and belief, the statements and representations set forth and referred to in paragraphs 17, 18, 20, 22 and 25 were false, and defendants knew said statements and representations to be false when made, or with reasonable effort could have known the truth with respect to said statements and representations, or made no reasonable effort to ascertain the truth with respect thereto, or did not have knowledge concerning said representations and statements.

50. Said Information Bulletin and revised Information Bulletin were published and circulated by defendants to induce or promote the sale or purchase within or from the State of New York of securities as defined in Section 352 of the General Business Law of the State of New York.

51. Repeat and reallege each and every allegation contained in paragraphs 42, 43 and 44 hereof with the same force and effect as if fully set forth herein.

Amended Complaint

FIFTH COUNT AGAINST DEFENDANTS COMMUNITY,
STATE, AGENCY, OSTROFF, SZOLD, ALTMAN, SCHECHTER,
MARINO, KRAMER, ALTER AND GOLDBERG

52. With respect to the defendants named herein, repeat and reallege each and every allegation contained in paragraphs 12, 13, 19 and 21 hereof with the same force and effect as if fully set forth herein.

53. On June 18, 1965, defendants caused Riverbay to enter into an administrative service agreement with Community, which provided for the payment to Community of \$200,000.

54. Upon information and belief, before and after May 12, 1965 numerous persons, all members of the class herein, subscribed to the common stock of Riverbay and paid thousands of dollars to Riverbay as down payments thereon.

55. By reason of the subscriptions and payments hereinabove alleged, defendants became fiduciaries to plaintiffs.

56. Upon information and belief, defendants thereafter breached said fiduciary obligations by knowingly causing Riverbay to pay and incur expenses for which it had no legal obligation and for which plaintiffs would be ultimately required to provide funds through increased carrying charges, as hereinbelow alleged.

57. With respect to the defendants named herein, repeat and reallege each and every allegation contained in paragraph 26 hereof with the same force and effect as if fully set forth herein.

58. On January 22, 1968, by agreement between Community and Riverbay, with the consent and approval of the

Amended Complaint

State, acting by and through the Commissioner, the lump-sum construction contract price was increased again, from \$267,830,750 to \$268,080,750, an increase of \$250,000 and an aggregate increase of \$9,578,000 from the original contract price.

59. On March 29, 1968, by agreement between Community and Riverbay, with the consent and approval of the State, acting by and through the Commissioner, the lump-sum construction contract price was increased the third time, from \$268,080,750 to \$269,980,750, an increase of \$1,900,000 and an aggregate increase of \$11,478,000 from the original contract price.

60. On October 9, 1969, by agreement between Community and Riverbay, with the consent and approval of the State, acting by and through the Commissioner, the lump-sum construction contract price was increased the fourth time, from \$269,980,750 to \$310,500,000, an increase of \$40,519,250 and an aggregate increase of \$51,997,250 from the original contract price.

61. On July 7, 1971, by agreement between Community and Riverbay, with the consent and approval of the State, acting by and through the Commissioner, the lump-sum construction contract price was increased the fifth time, from \$310,500,000 to \$340,500,000, an increase of \$30,000,000 and an aggregate increase of \$81,997,250 from the original contract price of \$258,507,750.

62. Upon information and belief, Community, with the consent and approval of the State, acting by and through the Commissioner, waived subcontractor's performance bonds.

63. Upon information and belief, Community and Riverbay, with the consent and approval of the State,

Amended Complaint

acting by and through the Commissioner, increased the fee to Community for "Builder's Home Office Overhead" to \$3,050,000 from the specified sum of \$2,000,000, and said increased fee was included as an item of the increased construction contract price.

64. Because of and in addition to the increase in the price of the construction contract, the costs of related service fees were likewise increased by \$2,510,000, as follows:

(a) Architect's fees increased from \$2,350,000 to \$2,975,000;

(b) Engineer's and laboratory fees increased from \$750,000 to \$1,275,000;

(c) Surveyor's fees increased from \$400,000 to \$1,450,000;

(d) Legal fees increased from \$150,000 to \$210,000;

(e) Selling expenses (payable to Community) increased from \$450,000 to \$600,000;

(f) Administrative expenses (payable to Community) increased from \$200,000 to \$300,000.

65. By reason of the foregoing, the construction cost was increased \$81,997,250 and related service fees were increased \$2,510,000, for a total increase of \$84,507,250. In order to provide funds to pay for said increases, defendants caused Riverbay to enter into several agreements with the Agency whereby the original mortgage loan to Riverbay was increased by an amount sufficient to cover the increases in construction cost and related services, as well as still further increases in financing costs incurred as a result of the increase in the amount of the mortgage loan

Amended Complaint

itself. In requesting and approving and in granting said increases in the mortgage loan, the Commissioner and the Agency acted with full knowledge that said increases were contrary to the original contract and agreements between Riverbay and Community and exceeded the authority of Riverbay.

66. With respect to the defendants named herein, repeat and reallege each and every allegation contained in paragraph 34 hereof with the same force and effect as if fully set forth herein.

67. Plaintiffs, and all persons similarly situated, have been damaged in that they have paid and will be obliged to pay carrying charges greatly in excess of the sums which they would be required to pay had defendants not breached their fiduciary obligations to plaintiffs.

SIXTH COUNT AGAINST DEFENDANTS COMMUNITY, STATE,
OSTROFF, SZOLD, SCHECHTER, MARINO AND GOLDBERG

68. Prior to May, 1965, the defendants other than the State, the Agency and Riverbay undertook to construct a cooperative housing development in Bronx County, New York, pursuant to the Mitchell-Lama Act. Pursuant to said undertaking, United caused Riverbay to be organized and applied to the State, acting by and through the Commissioner, for approval of a proposed development to be known as Co-op City, to be sponsored by United, owned by Riverbay, and constructed by Community to provide moderate-priced cooperative housing for people of limited means. Thereafter, defendants caused Riverbay to enter into a construction contract with Community dated June 18, 1965, which contract was approved by the State.

Amended Complaint

69. With respect to the defendants named herein, repeat and reallege each and every allegation contained in paragraphs 54 through 56 hereof with the same force and effect as if fully set forth herein.

70. Pursuant to the construction contract between Riverbay and Community, the construction costs of Co-op City chargeable to Riverbay could only be increased by reason of change orders for "additional or extra work" or decreased by reason of change orders for "work deleted."

71. Upon information and belief, defendants knowingly caused Riverbay to accept and pay for increased costs of construction which were not properly chargeable to Riverbay and they knowingly failed to obtain for Riverbay cost reductions for changes in the work for which a reduction should have been given.

72. Plaintiffs, and all persons similarly situated, have been damaged in that they have paid and will be obliged to pay carrying charges greatly in excess of the sums which they would be required to pay had defendants not breached their fiduciary obligations to plaintiffs.

73. By reason of the foregoing, plaintiffs have been damaged in a sum presently unknown to them but for which an accounting is required.

SEVENTH COUNT AGAINST DEFENDANTS COMMUNITY, STATE,
OSTROFF, SZOLD, ALTMAN, SCHECHTER AND GOLDBERG

74. Prior to May, 1965, the defendants other than the State, the Agency and Riverbay undertook to construct a cooperative housing development in Bronx County, New York, pursuant to the Mitchell-Lama Act. Pursuant to

Amended Complaint

said undertaking, United caused Riverbay to be organized and applied to the State, acting by and through the Commissioner, for approval of a proposed development to be known as Co-op City, to be sponsored by United, owned by Riverbay, and constructed by Community to provide moderate-priced cooperative housing for people of limited means.

75. With respect to the defendants named herein, repeat and reallege each and every allegation contained in paragraphs 54 through 56 hereof with the same force and effect as if fully set forth herein.

76. Upon information and belief, notwithstanding that defendants knew there was no need to construct an electric power plant and had represented in the revised Information Bulletin that Riverbay would purchase its power requirements, defendants caused Riverbay to pay \$27,200,000 to Community for the construction of an electric power plant and to pay further sums for the maintenance thereof, although electricity is in fact purchased from Consolidated Edison and paid for by plaintiffs by means of a separate charge over and above the monthly carrying charge.

77. Plaintiffs, and all persons similarly situated, have been damaged in that they have paid and will be obliged to pay additional carrying charges on account of said \$27,200,000 which they would not have been required to pay had defendants not breached their fiduciary obligations to plaintiffs.

*Amended Complaint***EIGHTH COUNT AGAINST DEFENDANTS COMMUNITY, STATE,
OSTROFF AND SCHECHTER**

78. With respect to the defendants named herein, repeat and reallege each and every allegation contained in paragraphs 74, 54 and 55 hereof with the same force and effect as if fully set forth herein.

79. Upon information and belief, defendants thereafter breached said fiduciary obligations as hereinbelow alleged.

80. Co-op City, when constructed, included certain space designed for occupancy by commercial tenants operating retail stores.

81. The rental income from said tenants is paid to Riverbay and is used by it to meet its obligations.

82. Upon information and belief, defendants knowingly caused some of said stores to be leased by Riverbay for less than a fair rental value and thereby deprived Riverbay of approximately \$500,000 in rental income.

83. As a result thereof, plaintiffs, and all persons similarly situated, have been damaged in that they have paid and will be obliged to pay additional carrying charges aggregating approximately \$500,000 which they would not have been required to pay had defendants not breached their fiduciary obligations to plaintiffs.

NINTH COUNT AGAINST DEFENDANT AGENCY

84. With respect to the defendant named herein, repeat and reallege each and every allegation contained in paragraphs 12 through 39 hereof with the same force and effect as if fully set forth herein.

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85. The foregoing constitutes a deprivation by defendant, under color of statute, regulation, custom or usage of the State of New York, of the rights, privileges or immunities secured to plaintiffs by the Constitution and laws of the United States.

86. Plaintiffs have no adequate remedy at law.

TENTH COUNT ON BEHALF OF RIVERBAY AGAINST DEFENDANTS COMMUNITY, STATE, AGENCY, OSTROFF, SZOLD, ALTMAN, SCHECHTER, MARINO, KRAMER, ALTER, GOLDBERG AND RIVERBAY

87. At all times mentioned herein, defendants Community, United and State dominated and controlled Riverbay and selected its directors and officers. By reason thereof, the defendant named herein owed a fiduciary obligation to Riverbay.

88. With respect to the defendants named herein, repeat and reallege each and every allegation contained in paragraphs 12, 13, 19, 21 and 53 hereof with the same force and effect as if fully set forth herein.

89. Upon information and belief, defendants, in violation of their fiduciary obligations to Riverbay, thereafter wasted the assets of Riverbay as hereinbelow alleged.

90. With respect to the defendants herein, repeat and reallege each and every allegation contained in paragraphs 26, 58 through 65, and 34 hereof with the same force and effect as if fully set forth herein.

91. The performance by Riverbay of said contract and agreements, as modified, in the future, would constitute continuing wrongs to Riverbay.

Amended Complaint

92. Riverbay has no adequate remedy at law.

93. A demand upon Riverbay to institute an action against defendants has not been made inasmuch as Riverbay is dominated and controlled by defendants themselves and such a demand would therefore be futile.

ELEVENTH COUNT ON BEHALF OF RIVERBAY AGAINST DEFENDANTS COMMUNITY, STATE, OSTROFF, SZOLD, SCHECHTER, MARINO, GOLDBERG AND RIVERBAY

94. With respect to the defendants named herein, repeat and reallege each and every allegation contained in paragraphs 68, 87, 89, 70 and 71 hereof, with the same force and effect as if fully set forth herein.

95. By reason of the foregoing, Riverbay has been damaged in a sum presently unknown to it but for which an accounting is required.

96. A demand upon Riverbay to institute an action against defendants has not been made inasmuch as Riverbay is dominated and controlled by defendants themselves and such a demand would therefore be futile.

TWELFTH COUNT ON BEHALF OF RIVERBAY AGAINST DEFENDANTS COMMUNITY, STATE, OSTROFF, SZOLD, ALTMAN, SCHECHTER, GOLDBERG AND RIVERBAY

97. Prior to May, 1965, the defendants other than the State, the Agency and Riverbay undertook to construct a cooperative housing development in Bronx County, New York, pursuant to the Mitchell-Lama Act. Pursuant to said undertaking, United caused Riverbay to be organized and applied to the State, acting by and through the Commissioner, for approval of a proposed development to be

Amended Complaint

known as Co-op City, to be sponsored by United, owned by Riverbay, and constructed by Community to provide moderate-priced cooperative housing for people of limited means.

98. With respect to the defendants named herein, repeat and reallege each and every allegation contained in paragraphs 87 and 89 hereof with the same force and effect as if fully set forth herein.

99. Upon information and belief, notwithstanding the fact that Riverbay never intended to produce its own electric power and so represented in the revised Information Bulletin, defendants caused Riverbay to pay \$27,200,000 to Community for the construction of an electric power plant and to pay further sums for the maintenance thereof, all to its damage in the further sum of at least \$27,200,000.

100. A demand upon Riverbay to institute an action against defendants has not been made inasmuch as Riverbay is dominated and controlled by defendants themselves and such a demand would therefore be futile.

THIRTEENTH COUNT ON BEHALF OF RIVERBAY AGAINST DEFENDANTS COMMUNITY, STATE, OSTROFF, SCHECHTER AND RIVERBAY

101. Prior to May, 1965, the defendants other than the State, the Agency and Riverbay undertook to construct a cooperative housing development in Bronx County, New York, pursuant to the Mitchell-Lama Act. Pursuant to said undertaking, United caused Riverbay to be organized and applied to the State, acting by and through the Commissioner, for approval of a proposed development to be known as Co-op City, to be sponsored by United, owned by Riverbay, and constructed by Community to provide mod-

Amended Complaint

erate-priced cooperative housing for people of limited means.

102. With respect to the defendants named herein, repeat and reallege each and every allegation contained in paragraphs 87 and 89 hereof with the same force and effect as if fully set forth herein.

103. Upon information and belief, defendants knowingly caused some of said stores to be leased by Riverbay for less than a fair rental value and thereby deprived Riverbay of approximately \$500,000 in rental income, to the damage of Riverbay in the further sum of \$500,000.

104. A demand upon Riverbay to institute an action against defendants has not been made inasmuch as Riverbay is dominated and controlled by defendants themselves and such a demand would therefore be futile.

WHEREFORE, plaintiffs demand judgment as follows:

1. Modifying and reducing the mortgage from Riverbay to the Agency to the extent that said mortgage exceeds a sum properly and lawfully chargeable to Riverbay.

2. Enjoining and restraining, permanently and during the pendency of this action, the collection of any carrying charges attributable to the amortization of, interest on and service fees relating to the portion of said mortgage which exceeds said sum.

3. Awarding damages against defendants in favor of plaintiffs for the sums paid by plaintiffs and to be paid by them as additional carrying charges to meet obligations imposed upon Riverbay by defendants which are in excess of the obligations represented to plaintiffs in the

Amended Complaint

Information Bulletin and the revised Information Bulletin and the original contracts entered into by Riverbay.

4. Awarding punitive damages against defendants in favor of plaintiffs in an amount to be determined.

5. Cancelling all agreements between Riverbay and defendants or any of them which require Riverbay to pay in the future any sums in excess of those sums it was obligated to pay under the original contracts entered into by Riverbay.

6. Requiring the defendants named in the Tenth and Eleventh Counts to account for and pay over to Riverbay all sums received by them from Riverbay in excess of the amounts which Riverbay was obligated to pay under the original contracts entered into by Riverbay.

7. Awarding damages against defendants in favor of Riverbay in an amount equal to all sums paid or required to be paid by Riverbay in excess of those sums it was obligated to pay under the original contracts entered into by Riverbay.

8. Awarding damages against the defendants named in the Twelfth Count in favor of Riverbay for at least \$27,200,000 for the cost of the Co-op City electric power plant.

9. Awarding damages against the defendants named in the Thirteenth Count in favor of Riverbay for \$500,000 for lost commercial rental income.

10. Awarding plaintiffs the costs and disbursements of this action, including reasonable counsel and accountants' fees.

Amended Complaint

11. Such other and further relief as to this Court may seem just and proper.

PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON

by s/ Louis Nizer

LOUIS NIZER

A Member of the Firm

477 Madison Avenue

New York, N. Y. 10022

(212) 758-6700

Attorneys for Plaintiffs

[Verification by Milton Forman Omitted]

Notice of Motion of Defendants United Housing Foundation, et al., to Dismiss the Amended Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[TITLE OMITTED IN PRINTING]

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of Harold Ostroff, sworn to December 19, 1972, and the exhibits annexed thereto, and upon the Amended Complaint herein, the undersigned will move this Court before Hon. Lawrence W. Pierce, D.J., in Room 2601, United States Courthouse, Foley Square, New York, N. Y. on January 2, 1973 at 10:00 A.M. or as soon thereafter as counsel can be heard, for an order, pursuant to Rule 12 of the Federal Rules of Civil Procedure, dismissing the Amended Complaint in its entirety as against them on the ground that this Court lacks subject matter jurisdiction over the claims set forth therein.

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 9(c) of the General Rules of this Court, answering papers

Notice of Motion

and memoranda are required to be served at least three days before the return date of this motion.

Dated: New York, New York
December 19, 1972

Yours, etc.,

PAUL, WEISS, RIFKIND, WHARTON
& GARRISON

By s/ Martin London

Attorneys for Defendants
Community Services, Inc.,
United States Housing Foundation,
Harold Ostroff, Robert Szold,
Milton Altman, George Schechter,
Anthony Marino, Irving Alter,
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s/ Alan G. Blumberg

ALAN G. BLUMBERG
Co-Attorney for Defendants
Robert Szold, Milton Altman and
Irving Alter
30 Broad Street
New York, New York 10004
(212) 422-1777

To:

[Names of Attorneys on Whom Served Omitted in Printing]

**Notice of Motion of Defendants New York State and
New York State Housing Finance Agency to
Dismiss the Amended Complaint**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[TITLE OMITTED IN PRINTING]

SIRS:

PLEASE TAKE NOTICE that, upon all the papers heretofore filed herein, the undersigned will move this Court before Hon. Lawrence W. Pierce, D.J., in Room 2601 United States Courthouse, Foley Square, New York, New York on January 9, 1973, at 10 A.M. or as soon thereafter as counsel can be heard, for an order, pursuant to Rule 12 of the Federal Rules of Civil Procedure, dismissing the Amended Complaint herein in its entirety as against them on the ground that this Court lacks subject matter jurisdiction over the claims set forth therein; upon the ground that the defendants, State of New York and New York State Housing Finance Agency are not "persons" within meaning of the Civil Rights Act provisions set forth in the amended complaint; upon all the grounds set forth in the said defendants' answer sworn to November 7, 1972, and, as to the defendant State, more particularly, upon the ground set forth in the answer that the State of New York, one of the named defendants is immune from suit herein by reason of the provisions of the Eleventh Amendment to the Constitution of the United States.

PLEASE TAKE FURTHER NOTICE that, pursuant to Rule 9(c) of the General Rules of this Court, answering papers

Notice of Motion

and memoranda are required to be served at least three days before the return date of this motion.

Dated: New York, New York
December 21, 1972

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
The State of New York and
New York State Housing
Finance Agency
Office & P. O. Address
80 Centre Street
New York, New York 10013

By:

/s/ Daniel M. Cohen

DANIEL M. COHEN
Assistant Attorney General
Tel: (212) 488-3446

To:

[Names of Attorneys on Whom Served Omitted in
Printing]

**Notation to the Place in the Petitions for Certiorari
Where Are Printed the Decisions Below and the
Judgment Sought to be Reviewed**

The opinion of the United States Court of Appeals for the Second Circuit is reprinted in the petition for writ of certiorari in No. 74-157 at Appendix A.

The opinion of the United States District Court for the Southern District of New York is reprinted in the petition for writ of certiorari in No. 74-157 at Appendix B.

The judgment of the United States Court of Appeals for the Second Circuit is reprinted in the petition for writ of certiorari in No. 74-157 at Appendix C.

**Notation to the Place in the Petitions for Certiorari
Where Is Printed the Order of the United States
Court of Appeals for the Second Circuit Denying
the Petition for Rehearing**

The Order of the United States Court of Appeals for the Second Circuit Denying the Petition for Rehearing is reprinted in the petition for writ of certiorari in No. 74-647 at Appendix D.

**Order of the United States Court of Appeals for
the Second Circuit Denying Petition for
Rehearing En Banc**

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

[Title Omitted in Printing]

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by counsel for the appellees, and no active judge or judge who was a member of the panel having requested that a vote be taken on said suggestion,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is **DENIED**.

IRVING R. KAUFMAN

s/ Irving R. Kaufman

Chief Judge

**Notation Regarding the Distribution of the
Second Circuit Appendix to the Justices**

By agreement with the Clerk's office, copies of the Second Circuit Appendix are also being distributed for the convenience of the Court.